

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD S. GARNER,

Plaintiff,

Case No. 1:08-cv-137

v

HON. JANET T. NEFF

STATE OF MICHIGAN et al.,

Defendants.

JUDGMENT

On February 8, 2008, Plaintiff filed a Complaint for Declaratory Judgment. On April 10, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) on grounds that the complaint failed to state a claim and Defendants are immune. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Judgment. See FED. R. CIV. P. 58.

Plaintiff argues that the Magistrate Judge erred in determining that he failed to state a claim. However, the Magistrate Judge properly concluded that Plaintiff has no constitutionally-protected liberty interest in being released on parole.

Plaintiff also argues that the Magistrate Judge incorrectly concluded that Defendants were immune. The Magistrate Judge accurately reasoned that states and their departments are immune from suit in the federal courts under the Eleventh Amendment unless Congress expressly abrogates immunity or it is waived by the state.

Further, Plaintiff contends that the Magistrate Judge did not correctly conclude that subject-matter jurisdiction is established in this matter. The Magistrate Judge did not dismiss Plaintiff's complaint based upon lack of subject-matter jurisdiction; therefore, Plaintiff's objection regarding subject-matter jurisdiction is unfounded.

For these reasons and because Plaintiff is proceeding *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

THEREFORE, IT IS ORDERED that the objections (Dkt 10) are DENIED and the Report and Recommendation (Dkt 9) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: September 16, 2008

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge